IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.24 OF 2004

Shri Aniruddha Pusalkar ...Applicant

v/s

Smt Smita Pusalkar and anr. ...Respondents

Mr Manoj S. Mohite for Applicant.

Mr A.V. Anturkar for Respondent No.1.

Mr R.Y. Mirza, APP for Respondent No.2.

CORAM : S.C. DHARMADHIKARI J.

DATE : 17TH NOVEMBER 2006.

P.C. :-

1. This criminal revision application was disposed of in terms of the consent terms which were signed by the parties to the criminal revision application so also Smt Indumati Pusalkar and Mrs Gulu Vinod Inglay.

2. Both sides do not dispute that the consent terms have been acted upon. However, it is the contention of one of the parties to this revision application that item No.20 which is a part of the annexure to the consent terms, has to be interpreted to mean that properties which are standing not just in the names of husband and wife alone but that of Smt Indumati Pusalkar, have to be handed over to Mrs Gulu Vinod Inglay and Mr Aniruddha Pusalkar.

3. Mr Anturkar appearing for Mrs Smita Aniruddha Pusalkar (wife) has tendered an affidavit and pointed out to me that the wife has complied with her part of the consent terms save and except item No.20. As per item No.20, necessary power of attorney has already been handed over to the husband Aniruddha. The statement contained in the affidavit affirmed on 16th November 2006 reads thus :-

> "I say that I have complied with my part of the consent terms save and except some part of condition No.20. As per condition No.20 in consent terms, I have already given the necessary power of attorney in favour of Mr Aniruddha Pusalkar regarding shares jointly in the names of Indumati Pusalkar, Aniruddha Pusalkar, Smita Pusalkar which consists almost approximately 80 % of the total shares."

4. However, Shri Anturkar submits that item No.20 would have to be held as restricted to the property (shares) standing in the names of husband, wife and Indumati, but they do not cover the shares which are standing in the name of Smt Indumati alone, Mrs Smita alone and Mr Aniruddha alone (individual properties) so also those standing in the names of Smt Indumati and Mrs Smita and Smt Indumati and Mr Aniruddha. He submits that item No.20 therefore has to be interpreted by this Court in the light of the circumstances and the background in which the consent terms were entered into between the parties. He invites my attention to the correspondence between the Advocates and the remarks which are to be found on the draft consent terms. In his submission, the interpretation that will have to be made of the words ’and/or’ would necessarily be that the

properties which stand in the names of individuals and jointly as indicated above would not in any manner be affected and in any event, they would not go to the share of Mrs Gulu Vinod Inglay.

5. Shri Mohite, on the other hand, contends that the stand of the wife is not proper. He submits that the consent terms have been mutually agreed upon. They are filed in this Court. An order is passed in terms thereof. So also in the light of the correspondence preceding the filing of the consent terms, it is clear that the Division and Distinction was to cover properties of Mr Aniruddha. Though such properties were to be distributed, the parties intended that properties belonging to the Pusalkar family also be included covered and once there is an overall settlement which in law in law is permissible, then there is no scope for any interpretation. He submits that the words 'and/or' would cover individual properties as well.

6. Both sides have agreed that they would abide by interpretation to be made by this Court on the aforesaid item No.20.

7. In my opinion, the intent of the parties was clear inasmuch as they were dividing properties as part of overall settlement by putting an end to the

matrimonial dispute. The parties were of the opinion that the properties, rights and disputes pertaining thereto, would survive even after putting an end to matrimonial disputes and therefore decided to include all properties. They decided to bring in properties held jointly as well as individually. Such being the intention in the consent terms, item No.20 would have to be interpreted to mean that all properties held by Pusalkars individually or jointly are divided and while making division, necessary undertakings be executed to give effect to the same.

8. That such overall settlement is permissible in law is not disputed before me. In such circumstances, the words 'and/or' would have to be interpreted consistent with the intent of the parties and reading consent terms as a whole, it is apparent that all disputes are settled thereunder. It is not now permissible to interpret the same de hors the agreement. Once the parties have signed the consent terms, they have been filed them in the Court and order in terms thereof has been passed, it is not necessary to give any other interpretation to the item No.20.

9. In the light of the above discussion it is clear that item No.20 covers all properties and it is not possible to accede to the submission of the wife

that joint properties of Smt Indumati and Mrs Smita and Smt Indumati and Mr Aniruddha alone are covered thereunder.

10. Criminal revision application stands disposed off in terms of the consent terms, so also the order interpreting item No.20. Needless to state that upon execution of the consent terms and orders being passed thereon by this Court, conviction imposed upon the applicant in criminal revision application No.24 of 2004 under section 498A is quashed and set aside, the proceedings come to an end.

11. Rule is made absolute in terms of prayer clause (a). All undertakings are accepted.